

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 26**

**Southwestern Bell Telephone Company,  
SBC Advanced Solutions, Inc.,  
SBC Operations, Inc., SBC Services, Inc.  
and SBC Telecom, Inc.**

**Employer**

**and**

**Case No. 26-UC-190  
(formerly 16-UC-191)<sup>1</sup>**

**Communication Workers of America, AFL-CIO**

**Petitioner**

**DECISION AND ORDER**

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, the undersigned finds:<sup>2</sup>

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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<sup>1</sup> The General Counsel issued an Order Transferring Case from Region 16 to Region 26. Pursuant to said Order, to the extent that further proceedings are appropriate to effectuate this Decision, this case will automatically transfer back to Region 16 and will continue as Case 16-UC-191 except that Region 26 will retain jurisdiction only with respect to issues relating to the substance of this Decision.

<sup>2</sup> The Employer and the Petitioner filed briefs, which have been duly considered.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>3</sup>

3. I find the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. The Petitioner proposes to clarify the existing multi-employer bargaining unit by adding the 26 field service representatives, senior field service representatives, and associate field service representatives in the states of Arkansas, Texas, Oklahoma, Kansas and Missouri, who are performing work for the “work group”, "SBC DataComm", to the existing unit. The Employer opposes the addition of these employees. The existing unit consists of approximately forty thousand (40,000) employees with the job titles and job classifications listed in Appendices A, B, C, D, H and I, of the current collective bargaining agreement (CBA) between the Employer and the Petitioner and includes systems technicians and outside plant technicians. .

The Employer and the Petitioner have a longstanding collective bargaining relationship. The current collective bargaining agreement is for the period of February 1, 2001 to April 4, 2004. The CBA covers the five-state area of Arkansas, Texas, Oklahoma, Kansas and Missouri.

On January 1, 1984, pursuant to court order, the divestiture of the Bell System became effective. At that time, separate corporations were created, including Southwestern Bell Telephone Company, (which was later renamed as SBC

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<sup>3</sup> The parties stipulated that Southwestern Bell Telephone Company, SBC Advanced Solutions, Inc., SBC Operations, Inc., SBC Services, Inc., and SBC Telecom, Inc., hereinafter referred to as the Employer, SBC DataComm, Inc., SBC Global Services, Inc., and Ameritech Corporation are Delaware corporations with offices and places of business in Houston, Texas and other cities in the southwest and mid-west United States, where they are engaged in the business of telecommunications. Within the past 12 months, a representative period, the Employer derived gross revenues valued in excess of \$100,000 and performed services valued in excess of \$5,000 in states other than the State of Texas.

Communications, Inc., at which time Southwestern Bell Telephone Company became a subsidiary) and Ameritech Corporation (hereinafter referred to as Ameritech). Ameritech covered the states of Illinois, Michigan, Ohio, Indiana and Wisconsin. Ameritech created a subsidiary entitled Ameritech Communications, Inc. to be responsible for the installation and service of customer premise equipment (CPE).

In 1994, Ameritech Communications, Inc. added, "managed services" to its business operations, whereby it would handle all telecommunications business for certain customers. Under "managed services", Ameritech Communications, Inc. conducted business outside its five-state region because some customers had business outside the region. Thus, Ameritech Communications, Inc. employed some employees outside their five-state region including the five-state region served by Southwestern Bell Telephone Company. During the same time period, Southwestern Bell Telephone Company (hereinafter-Southwestern Bell) created a subsidiary entitled SBC Telecom Group, which performed the same CPE service as Ameritech Communications, Inc.

In November 1998, Ameritech Communications, Inc. was renamed Ameritech Information Systems, Inc. (AIS). In late 1999, the parent corporations SBC Communications, Inc. (hereinafter referred to as SBC) and Ameritech Corporation merged. Although they kept their respective names the merger resulted in Ameritech Corporation becoming a wholly owned subsidiary of SBC. In January 2000, AIS was renamed SBC Global Services, Inc. (hereinafter referred to as Global Services). Global Services is a wholly owned subsidiary of Ameritech.

According to David Jordan, regional vice-president for SBC DataComm Operations, following the merger of SBC and Ameritech, SBC Telecom Group and

Global Services, while maintaining their separate identity, formed a “work group” entitled SBC DataComm. The “work group”, SBC DataComm, included employees of Southwestern Bell, Global Services and SBC DataComm, Inc. According to Jordan, SBC DataComm is “just a moniker”, rather than a separate corporation. SBC DataComm is different from SBC DataComm, Inc., which is a subsidiary of Ameritech and provides network integration services. SBC DataComm, Inc. does not employ any field service representatives or systems technicians; rather, it only employs engineers and sales representatives. In a letter with attachments to the Union dated December 21, 1999 the Employer referred to a “new work group” within Southwestern Bell Telephone called SBC DataComm. The attachment noted that “Employees will remain on the Southwestern Bell Telephone Company payroll and be covered by the 1998 Labor Agreements”. The attachment also noted that this was one of several initiatives resulting from the SBC merger with Ameritech. Another portion of the attachment specifically reiterated that “Employees transferred to SBC DataComm will remain in the existing bargaining unit under the 1998 Labor Agreements. They will also retain all existing employee benefits including medical, pension, etc.”

At all material times field service representatives Kelly Rudkin and John Simmons have been assigned to the Dow Chemical facility in Freeport, Texas. Prior to the merger of SBC and Ameritech, Rudkin and Simmons were employed by AIS, the Ameritech subsidiary. There is no contention that as employees of AIS they were ever part of the multi-employer bargaining unit at issue herein. As previously noted, AIS in January, 2000 was renamed SBC Global Services, Inc. However, Rudkin and Simmons testified that, after the merger of SBC and Ameritech, managers John Young and Jim

South, told them that AIS no longer existed and that they were now employed by SBC DataComm. The name, Ameritech, was removed from their vehicles. Also, at that time, Rudkin and Simmons received business cards and shirts, which named SBC DataComm. South also stated that employees should refer to themselves as employed by SBC DataComm. However Simmons paystub for the period April 15-20, 2001 still listed Ameritech as his Employer. Shortly thereafter Simmons applied for and obtained a position with Southwestern Bell. Thereafter his paystub for the period April 29-May 5, 2001 listed his employer as SBC Communications Inc.

During this same time period, Southwestern Bell systems technician Steve Silence stated he and his fellow employees were given business cards and shirts naming SBC DataComm.

On January 11, 2000, the Petitioner met with Southwestern Bell officials, including Joe Croci, vice-president of field operations for SBC DataComm, at the Technology Change Committee meeting. During this meeting, Croci stated SBC DataComm would be a part of Southwestern Bell. Due to these statements, Union vice-president Milburn testified the Petitioner did not realize Southwestern Bell would consider some of the employees of SBC DataComm outside of the bargaining unit. The Union was not informed of the existence of Global Services until after it filed the unit clarification petition and shortly before the hearing herein.

On January 8, 2001, Simmons and Rudkin, filled out union dues checkoff cards and submitted them to Southwestern Bell. On about January 18, 2001, the cards were

returned to the employees with an explanation that they were employed by AIS<sup>4</sup>, which was not a party to the collective bargaining agreement; rather than Southwestern Bell. Thereafter, the Petitioner grieved this matter but on March 7, 2001, the Employer stated that the matter was not susceptible to the grievance process. Since then, the Employer has continued to assert this position.

During this same time period, in January 2001, regional vice-president for DataComm operations Jordan stated in a newsletter to SBC DataComm employees that he was "pleased to be part of the SWBT team". Jordan is not actually employed by Southwestern Bell; rather he is employed by SBC Managed Services USA, Inc., a subsidiary of SBC.

There are 26 field service representatives (FSRs) on the payroll of Global Services who work within the SBC DataComm work group. Five of the FSRs are based in St. Louis, Missouri and report to supervisor Warren Kemerer of Global Services. The remaining FSRs are located in either Austin, Freeport, Greater Dallas-Fort Worth or Houston, Texas and report to supervisor Theophilus Johnson. Although he works for Global Services, Johnson is actually on the payroll of SBC Managed Services USA, Inc. Until the unit clarification petition was filed, Johnson reported to Keith Poe, director of field operations in Houston for SBC DataComm, who reported to Jordan. Currently, Johnson reports to Garth Person, director of national services, for Global Services who reports to Jordan. There was no evidence presented that either Kemerer or Johnson supervise any employees on the payroll of Southwestern Bell who perform work within the DataComm work group.

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<sup>4</sup> In actuality, AIS had ceased to exist and Rudkin and Simmons were employed by Global Services.

Southwestern Bell employs numerous customer service technicians (CSTs) and systems technicians in the various locations in its five-state area including Greater St. Louis and Kansas City, Missouri, Little Rock, Arkansas, Tulsa and Oklahoma City, Oklahoma, Wichita and Shawnee, Kansas, Dallas-Fort Worth, Austin, San Antonio and Houston, Texas. Overall, there are approximately 600 employees on the payroll of Southwestern Bell working for the DataComm workgroup. Approximately 18 of the CSTs and systems technicians, including Steve Silence, report to Raleigh Nepeaux (incorrectly spelled as Rawley Novo in the transcript), a manager of field operations in Houston. Nepeaux reports to DataComm director of field operations Poe, who as previously noted reports to Jordan.

Jordan described employees of Southwestern Bell and Global Services as "perform (ing) work which is similar in terms of functionality but distinctly separate in origin of geography." Specifically, Global Services field service representatives, and Southwestern Bell systems technicians and customer service technicians install switches<sup>5</sup> for customers and perform maintenance at the customers' premises. According to Jordan, the difference is that employees of Global Services work in a "managed services contractual arrangement", wherein they are trained and work on products manufactured by Siemens, Intecom, Lucent and Nortel while Southwestern Bell employees only work on one brand of product – Nortel. However, Global Services employee Rudkin testified the only training he received was on the job training. Another difference cited by the Employer's witnesses is that Global Services employees are

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<sup>5</sup> Switches are computers for phone service.

dedicated (regularly assigned) to one employer while Southwestern Bell employees are not dedicated to an employer. On cross-examination, however, DataComm resources employee Ward conceded that some Southwestern Bell employees are dedicated to customers.

Both Southwestern Bell and Global Services employees working in the DataComm operational group, perform work on a regular basis for Dow Chemical in Freeport, Texas. Global Services has six (6) field service representatives, who are regularly assigned to the Dow Chemical facility, while an unspecified number of Southwestern Bell employees work on switches there about three times a week.

According to Jordan and Ward, it is very unusual for employees of Global Services and Southwestern Bell to work together. Moreover, no other evidence was presented where Global Services and Southwestern Bell employees worked at the same location.

Global Services employees Simmons, Rudkin and Randy Thompson testified they were dedicated or specifically assigned to the Dow Chemical facility in Freeport, Texas. At the Dow Chemical facility, they performed "installs, repairs, moves, adds and changes" as well as maintenance on the Intecom switch. Rudkin testified he extended T-1 cables and ISDN lines to the customer's equipment. Before he performed this work, Southwestern Bell system technicians ran the cable to the "demark" line. Thompson, a field service representative, testified he "pulled phone cable" along with Southwestern Bell outside plant technicians (formerly referred to as linemen) on the outside or other side of the demark line. Thompson also testified he performed work on the inside of the demark line when he worked on the Intecom switch. On other occasions, Southwestern



Bell and Global Services employees have worked together at the Dow facility with Southwestern Bell employees pulling the cable and Global Services employees testing the cable.

Silence, a systems technician for SBC DataComm and employee of Southwestern Bell, testified he performed similar work as Rudkin at the Dow facility—installing and maintaining switches and working on phones, computers, wiring and other customer premises equipment. Both Silence and Rudkin work on the customer side of the “demark” line. Silence also stated he was dedicated to several law enforcement agencies and their 911 service. Although Silence said he was trained at a school, he stated he could perform work on other products by reading the products’ manuals. This testimony was contrary to Jordan’s testimony that he did not think systems technicians could work on products by merely reading their manuals.

Donna Ward, an employee in the human resources department of SBC DataComm Operations, testified there were certain differences between systems technicians and field service representatives. Specifically, Ward stated the FSRs “coach” junior employees, delegate work to junior employees and fill-in for supervisors while systems technicians do not perform these duties. In later testimony, Ward stated that systems technicians receive on the job training from more experienced craft employees, which is “coaching” but not on an everyday basis. Silence testified that systems technicians do “coach” employees, delegate work to junior employees and act as leadmen on large projects, such as the construction of Enron Field in Houston.

The benefits and pay of employees of Global Services and Southwestern Bell, who perform work for SBC DataComm, are different but have some similarity. The

wages and benefits for Southwestern Bell employees are determined through collective bargaining. Concerning pay, Global Services employees working in the metropolitan areas of St. Louis, Dallas and Houston earn between \$23,300 and \$52,400 while Southwestern Bell employees earn between \$13,520 and \$50,726. Concerning overtime pay, paid holidays, shift differential, call-out pay, vacation scheduling and medical insurance, employees of both companies receive similar benefits. Effective in 2002, employees of both companies have the same medical insurance plans to choose from. There are distinct differences on a few items. For example, Global Services employees are eligible for a bonus while Southwestern Bell employees are not eligible. Additionally, Southwestern Bell employees receive discounted phone service while Global Services employees do not.

Employees who are not dedicated to a particular customer are dispatched by separate offices. Global Services non-dedicated employees are dispatched from Arlington Heights, Illinois while non-dedicated Southwestern Bell employees are dispatched from St. Louis, Missouri.

Ward testified that Global Services and Southwestern Bell do not have centralized hirings, job postings, payroll or personnel records. Although she stated that there are not centralized labor relations, Ward admitted she provides both Global Services and Southwestern Bell with personnel services. Ward is employed in the human resources department of SBC Communications. The record indicates one occasion where a Global Services employee, John Simmons subsequently became an employee of Southwestern Bell. Simmons was not allowed to effect a lateral transfer. Rather, he had to formally apply for the position. However, after being hired by

Southwestern Bell, Simmons was able to keep his prior seniority. As previously noted, before the change in positions Simmons paycheck indicated he was employed by Ameritech whereas after the change his paycheck was in the name of SBC Communications Inc.

Before resolving the substantive issue of whether there is an accretion, the Employer raises two procedural issues that must be resolved. First, the Employer asserts that the Petitioner is raising a work assignment issue, which cannot be resolved in a unit clarification case. Although the Employer is correct that a work assignment issue cannot be resolved in a unit clarification case<sup>6</sup>, the record evidence does not support the assertion that the Petitioner is seeking that the work at issue be assigned to current Southwestern Bell unit employees. Instead, the testimony of Milburn shows the Petitioner is seeking that the Global Services field service representatives working within the DataComm work group be included in the existing unit.

Second, the Employer asserts that the Global Services employees cannot be accreted into the Southwestern Bell bargaining unit because it is a multi-employer bargaining unit, wherein each employer must consent to its employees being included in the bargaining unit. The Petitioner asserts that since the Employer “uses its many corporate subsidiaries as corporate shells for payroll purposes (this) makes the Company’s separate-corporation argument untenable.” Moreover, the Petitioner asserts “the organizational reality is that there is a unitary business entity known as SBC DataComm... and it is clear that the placement of the former Ameritech employees

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<sup>6</sup> See **Coatings Application and Waterproofing Co.**, 307 NLRB 806 (1992).

under the aegis of ‘SBC Global Services, Inc.’ for payroll purposes is only a payroll or bookkeeping artifice that does not reflect organizational reality.”

It is well-established Board law that employers must agree to a multi-employer bargaining unit and cannot be forced into such a situation. See **Sands Point Nursing Home**, 319 NLRB 390 (1995); **Central Transport, Inc.**, 328 NLRB 407, 408 (1999). In the present case, it is undisputed that Global Services is not part of the multi-employer unit. Although the Petitioner argues that it was misled concerning the employee composition of SBC DataComm, this does not allow the Petitioner to involuntarily force Global Services into the multi-employer bargaining unit absent a finding of alter-ego or single employer status. The Petitioner’s assertion that the Employer used corporate shells for its own purposes is insufficient to establish such as a fact. Moreover, the Petitioner’s assertion is somewhat belied by its continued adherence to the multi-employer bargaining unit format in the most recent negotiations during which time it is clear that the DataComm work group had come into existence. In this regard, given the parent corporation’s numerous subsidiaries that have historically existed and been apparently acknowledged by the Petitioner as constituting separate employers, including those subsidiaries contained in the acknowledged multi-employer bargaining unit, I find the evidence insufficient to conclude that Global Services does not constitute a separate employer because of its integration in the DataComm work group. Thus, I find the Petitioner’s attempt to accrete a separate employer into a multi-employer bargaining unit is unsupported by Board law. Therefore, I shall dismiss the petition on that basis.

Assuming *arguendo*, that, upon review, the Board does not agree with my finding that Global Services is a separate employer, then I must determine whether the Global Services employees share an overwhelming community of interest with employees of the existing bargaining unit that would warrant a finding of accretion. In performing such an analysis, the Board weighs various factors including: skills and functions of employees, interchange of employees, similarity of working conditions, integration of operations, centralization of management and administrative control, geographical proximity, common control of labor relations, and collective bargaining history. **Archer Daniels Midland Co.**, 333 NLRB No. 81, p. 3 (2001); **Progressive Service Die Co.**, 323 NLRB 183 (1997). Employee interchange and common day-to-day supervision are two of the most important factors. **Towne Ford Sales**, 270 NLRB 311 (1984).

Skills and Functions As the record evidence reflects, through the testimony of Jordan, Simmons, Rudkin and Thompson, the field service representatives of Global Services and the systems technicians and customer service technicians of Southwestern Bell have similar skills and perform similar job functions. Although the Employer's witness Ward attempted on direct examination to distinguish the job duties and skills of Global Services employees, her conclusionary testimony was rebutted by the testimony of employee Silence as well as her concessions on cross-examination. The record evidence reflects both groups of employees are trained and perform fairly similar work on various equipment at the customers' premises.

Integration of Operation and Geographical Proximity The record evidence on these two factors that while both groups of employees are performing similar work for customers in the same five-state area within the DataComm work group, there is only

one location, Dow Chemical in Freeport, Texas where 6 of the 26 Global Services employees and an unspecified number of the 600 Southwestern Bell employees perform substantially similar work for the same customer. Moreover, it is undisputed that the Global Services employees and the Southwestern Bell employees receive their work assignments and are dispatched from geographically distant locations. I find that the evidence involved in these two factors do not mandate a finding of accretion.

Similarity of Working Conditions As previously stated, many of the benefits and working conditions of the Southwestern Bell employees and Global Services employees are similar. A few of the benefits, such as reduced cost telephone service and bonuses, are not available to both groups of employees. Concerning wages, the highest wage for both groups is similar while the starting wage is dissimilar. In **The Sun**, 329 NLRB No. 74, slip op. 6 (1999), the Board stated:

[R]eliance on differences in wage rates between existing unit employees and employees sought to be included would be misplaced. Wages of unit employees, of course, are subject to negotiations, which necessarily do not control wages of non-unit employees. Any resulting disparity should not provide a separate basis for continuing to exclude employees from the unit when the employees now perform work covered by the unit description. To permit reliance on factors that employer can manipulate in an effort to exclude employees from the unit would be a "patent form of circular reasoning."

Thus, this factor cannot support a finding against accretion.

Centralization of Management and Administrative Control

Day to day supervision is more important than higher managerial control. **Super Valu Stores**, 283 NLRB 134, 137 (1987). In the present case, there is no common day to day supervision of both groups of employees; rather, each group has separate first-line supervisors. At the next levels of management, there is commonality in that Poe and Jordan are second-level and third level managers, respectively, for Southwestern Bell

and Global Services within SBC DataComm. The Board has held the lack of common day today supervision to be significant in making a finding of no accretion.

Common Control of Labor Relations This factor is in dispute. Although Ward testified there is not any common control of labor relations, she conceded that in performing human resource functions within the DataComm work group she advises both Southwestern Bell and Global Services supervisors and managers on personnel matters. Obviously, many personnel matters for Southwestern Bell employees are covered by the collective bargaining agreement. As previously noted, the Board stated in **The Sun**, *supra*, that reliance on a factor that is in control of management should not be a basis for finding the lack of accretion.

Collective Bargaining History. The Petitioner has historically represented employees of Southwestern Bell in the positions of systems technicians, customer service representatives and similar situated employees in the five state area of Arkansas, Texas, Oklahoma, Kansas and Missouri prior to the establishment of the DataComm workgroup. The evidence also establishes that the Petitioner did not previously represent the field service representative employees of AIS, Global Services' predecessor, in the same five-state region prior to the Ameritech merger with SBC Communications. Subsequent to the merger and the creation of the DataComm work group in 1999 and the new collective bargaining agreement which was effective February 1, 2001 there is no evidence that either the Petitioner or any of the 26 Global Services employees ever sought to apply any of the prior or current contractual provisions to the Global Services employees at issue.

Employee Interchange This factor is considered to be a very important factor in the analysis. The Employer asserts this factor as well as the lack of day-to-day common supervision supports a finding of no accretion. The record reflects the movement of one employee from Global Services to Southwestern Bell. There is no evidence of any temporary transfer of employees between Global Services and Southwestern Bell. The evidence also establishes that at Dow Chemical, an unspecified number of Southwestern Bell systems technicians and customer service representatives and six Global Services field service representatives have worked alongside each other performing related duties. However, there is no other evidence of interaction between employees of the two employers. Thus, the Petitioner's evidence of interaction is limited.

In summary, assuming the Petitioner prevails and it is found that Global Services' employer status does not prevent its employees from being accreted into the unit, I find the field service representatives of Global Services within the work group, SBC DataComm, do not share an overwhelming community of interest with the systems technicians and customer service representatives of Southwestern Bell who also work in the SBC DataComm work group. Although the field service representatives, systems technicians and customer service representatives have similar skills and functions, some similar working conditions, general geographical proximity and common control of labor relations and centralization of management above the first level, the record evidence, fails to show common interchange, common interaction or common day to day supervision. Since the Board has found the factors of common interchange and day to day supervision are most important, I find the Petitioner's assertion of



overwhelming community of interest must fail. See **Towne Ford**, *supra*, **Super Valu Stores**, *supra*, and **Safety Carrier**, 306 NLRB 960 (1992), where an accretion was not found due to only skills, functions and labor relations being common, and not day to day supervision or frequent interchange.

The Petitioner's citation to **Austin Cablevision**, 279 NLRB 535 (1986), is distinguishable. First, in that case both the bargaining unit employees and the accreted employees were employed by the same employer which I have found not to be the present situation. Second, the Board found an overriding functional integration sufficient to overcome the lack of other community of interest accretion factors including lack of common day to day supervision and lack of interchange. Such an overriding functional integration factor is not present here. Finally, the Board's general rule is not to clarify a unit defined by contract during the term of the agreement to include positions in existence prior to the agreement's inception. **A-1 Fire Protection**, 250 NLRB 217, 221 fn. 23 (1980) **Gitano Group, Inc.**, 308 NLRB 1172, 1173-1174 (1992)

### **ORDER**

**IT IS HEREBY ORDERED** that the unit clarification be and it hereby is dismissed.

Dated this 18<sup>th</sup> day of January 2002 at Memphis, Tennessee.

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Ronald K. Hooks, Director, Region 26  
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